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State v. Holland Appellant's Brief Dckt. 45167

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45167
)	
v.)	ADA COUNTY NO. CR01-17-3681
)	
TRAVIS EARL HOLLAND,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Travis Earl Holland pled guilty to domestic violence, his only felony, and at sentencing both parties recommended a suspended sentence and probation. Additionally, Mr. Holland asked for a withheld judgment. The district court imposed a unified sentence of eight years, with one-year fixed, and declined to grant probation or consider a withheld judgment. On appeal, Mr. Holland asserts that the district court’s sentencing decisions are unreasonable under the facts of his case, and represent an abuse of discretion.

Statement of the Facts and Course of Proceedings

Mr. Holland and his wife, Tamar Holland, had an argument regarding Ms. Holland's involvement with another man. (PSI, pp.3, 74.) Mr. Holland became angry and lost his composure, and he struck Ms. Holland causing her eye to swell nearly shut; Ms. Holland also had red marks around her neck and jaw, although Mr. Holland did not recall grabbing her neck during the incident. (PSI, pp.3, 74, 84; Tr., p.41, Ls.22-24.) Ms. Holland went to St. Alphonsus's Hospital, and the nurse there contacted the police. (PSI, p.3.) Mr. Holland was subsequently arrested and charged with domestic violence, and when police found baggies of illicit drugs in his clothing pockets, he was also charged with possession. (PSI, pp.3, 76; R., p.9.) Mr. Holland had sole legal custody of his nine-year old son at the time, who was placed in foster care after Mr. Holland's arrest. (PSI, pp.12, 42.)

Pursuant to a plea agreement, Mr. Holland pled guilty to domestic violence and agreed to undergo a domestic violence evaluation; in exchange, the State promised to limit its sentencing recommendation to eight years, with three years fixed. (R., p.70; Tr., p.27, Ls.17-23; p.49, Ls.5-8.) The State also promised to recommend probation, unless the domestic violence evaluation showed Mr. Holland to be a high risk for re-offense. (Tr., p.27, Ls.17-23; p.49, Ls.5-8.)

At sentencing, both the State and Mr. Holland recommended that Mr. Holland be granted probation. (Tr., p.59, Ls.8-10; Tr., p.65, Ls.20-22.) Additionally, Mr. Holland asked the district court to withhold judgment for a period of five years (Tr., p.65, Ls.22-23), and asked that any jail time ordered as a condition of probation be limited and intermittent, allowing him to continue working with the Department of Health and Welfare toward a plan for reunification with his son. (Tr., p.59, Ls.11-16; Tr., p.66, Ls.8-11.)

The district court imposed a unified sentence of eight years, with one year fixed, and declined to place Mr. Holland on probation or to consider granting a withheld judgment. (Tr., p.74, Ls.10-14; R., p.84.) Mr. Holland timely appealed. (R., p.88.)

ISSUE

Did the district court abuse its discretion by declining to consider a withheld judgment or probation for Mr. Holland, and by sentencing him to an excessive prison term of eight years, with one year fixed?

ARGUMENT

The District Court Abused Its Discretion By Declining To Consider A Withheld Judgment Or Probation For Mr. Holland, And By Sentencing Him To An Excessive Prison Term Of Eight Years, With One Year Fixed

A. Introduction

Both the State and Mr. Holland recommended probation in this case, and Mr. Holland's rehabilitation would be served by granting him a withheld judgment. The district court abused its discretion by declining to consider a withheld judgment or probation for Mr. Holland, and by sentencing him to an excessive prison term of eight years, with one year fixed.

B. Standard Of Review

Where a defendant challenges his sentence as excessively harsh, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002);

State v. Toohill, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834. When reviewing the length of a sentence, the Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722 (2007).

After a person has been convicted of a crime, the district court may, in its discretion, withhold judgment. I.C. § 19-2601(3); *State v. Rollins*, 152 Idaho 106, 114 (Ct. App. 2011). Refusal to grant a withheld judgment will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a withheld judgment would be inappropriate. *Rollins*, 152 Idaho at 114. Factors that bear on the imposition of sentence also apply on review of the discretionary decision to withhold judgment. *State v. Geier*, 109 Idaho 963, 965 (Ct. App. 1985).

The district court also has discretion to impose a sentence of imprisonment instead of probation but, before doing so, the district court must consider the criteria set forth in I.C. § 19-2521(1); *State v. Staten*, 114 Idaho 925, 927 (Ct. App. 1988). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with those criteria. *State v. Martinez* 122 Idaho 158, 163 (Ct. App. 1992).

C. The District Court Abused Its Discretion By Sentencing Mr. Holland To An Excessive Term Of Eight Years, With One Year Fixed, And By Declining To Consider A Withheld Judgment Or To Place Him On Probation

Mr. Holland was thirty-eight years old at sentencing. (PSI, p.2.) He recognizes he has a problem controlling his emotions and he is ready and willing to change. (PSI, p.179; Tr., p.68, Ls.1-6.) He loves his wife and his children, and he is motivated reunite with his family. (Tr., p.65, Ls.10-13; p.68, Ls.7-12.) As evidenced by his prompt undertaking of the treatment

recommended in the evaluation prior to sentencing, and without being ordered (Tr., p.65, Ls.1-4), Mr. Holland is committed to treatment; he wants tools that will help him control his behavior and make the much-needed change happen (R., p.179; Tr., p.65, Ls.1-4).

He wants to be a good husband and father, and his family needs him to be available, too. After his son was placed in foster care, Mr. Holland began working with the Department of Health and Welfare and Child Services on a plan to reunite his family. (PSI, p.17; Tr., p.66, Ls.1-7.) He acknowledged the need for punishment in this case, but for the sake of his family he asked for probation with intermittent jail, so that he could complete the reunification plan and not further disrupt his son's life. (Tr., p.65, L.20 – p.66, L.7.) He and Ms. Holland were in counselling together through their church, working toward reconciliation. (PSI, p.11.) Ms. Holland explained to the court that she had raised Mr. Holland's son as her own for the past six years, and she wants the boy to see them as a family unit, able to do activities together. (Tr., p.15, L.24 – p.16, L.5.)

Mr. Holland also asked the court for a withheld judgment (Tr., p.65, Ls.20-23), which would enhance his employment opportunities and his ability to provide for his young family; this is especially motivating for Mr. Holland, given his relatively recent work disability and work limitations, and his need for a new vocation (PSI, pp.15, 16; Tr., p.64, Ls.11-17).

Also, and as highlighted by the GAIN assessments, Mr. Holland has significant mental health issues which should be taken into account. He has been diagnosed with generalized anxiety, ADHD, post-traumatic stress disorder, and major depression, and he has been prescribed an array of medications. (PSI, p.27.) However, the impact of these disorders has never been adequately addressed or managed; as recommended in the GAIN report, and the mental health

examination appended to it, Mr. Holland is in need of counselling to help him develop necessary coping skills. (PSI, pp.12, 32.)

In light of these facts, and notwithstanding the aggravating ones, Mr. Holland contends that the district court's decisions to deny him a withheld judgment and probation, and to impose an excessive prison sentence of eight years, with one year fixed, represent an abuse the court's sentencing discretion.

CONCLUSION

Mr. Holland respectfully requests that this Court vacate his sentence and remand his case to the district court for resentencing, with instructions that the court place him on probation and consider granting a withheld judgment. Alternatively, he asks that this Court reduce his sentence.

DATED this 7th day of November, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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RICHARD D GREENWOOD
DISTRICT COURT JUDGE
E-MAILED BRIEF

KYLE O SCHOU
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas